

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-381

December 23, 1999

PINE TREE TELEPHONE COMPANY
Request for Approval of Reorganization
and for Exemption From Approval for
Certain Future Reorganizations and
Motion for a Protective Order

ORDER APPROVING
REORGANIZATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

On June 8, 1999, Pine Tree Telephone & Telegraph Company (Pine Tree) filed a request for approval of a reorganization. The proposed reorganization consisted of the sale of a majority of the shares in Pine Tree to new owners. The current owner of most of these shares, Timothy Hutchinson, is an affiliated interest of Pine Tree because he owns more than 10% of its voting shares. The new owner, PTW Corporation, as well as certain owners of PTW that will own more than 10% of its voting securities, will become affiliated interests of Pine Tree, and Mr. Hutchinson will cease to be an affiliated interest.¹ On December 8, 1999, the parties filed a Stipulation. The Stipulation agreed that the reorganization should take place and that certain future exemptions to the reorganization should be granted, subject to certain conditions concerning Pine Tree's rates and rate structure. In this Order, we approve the reorganization, subject to parties agreeing to certain modifications to the Stipulation.

35-A M.R.S.A. § 708(2)(A) states:

No reorganization may be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of the utility's ratepayers and investors.

We have interpreted this provision to require a finding that ratepayers will not be harmed by the reorganization. We find that ratepayers are protected under the Stipulation in this case for two reasons. First, the new owner has agreed that it will not request an acquisition adjustment for the substantial premium over book value that it is paying for the Pine Tree's stock. Second, the new owner has agreed that Pine Tree will reduce its rates following the acquisition and that Pine Tree will not request a rate increase for a period of five years unless certain narrowly-defined exogenous changes occur.

¹ The nature of the reorganization changed during the proceeding, as set forth in the narrative contained in Part I of the Stipulation.

We also find that the management and ownership team of PTW, which is the proposed new owner of Pine Tree, has had extensive experience in the telephone industry and is competent to manage Pine Tree. Finally, we find that the reorganization is consistent with the interests of company's investors, although we largely defer to their judgment in that respect. As indicated above, the Company's present investors are being paid a substantial premium over net book value for their shares in Pine Tree.

At our deliberations on this Stipulation, we raised questions about the adequacy of certain provisions in the Stipulation that exempt Pine Tree from the need to obtain Commission approval under 35-A M.R.S.A. § 708 for many future reorganizations. Section 708(2)(A) requires approval of all reorganizations "[u]nless exempted by rule or order of the commission" A reorganization is broadly defined to include:

any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in Section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer or voting securities or property.

An "affiliated interest" is also defined broadly. Section 707(1)(A) states in part:

A. "Affiliated interest" means

(1) Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of a public utility;

(2) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (1).

Thus, under a holding company structure, if a holding company of a public utility holds a 10% interest in another company, that other company is an affiliated interest of the public utility, even though it may be in a different line of business and its operations may have no direct impact on the public utility. In the past, we have approved broad exemptions from the approval requirement, subject to important exceptions that we have found adequately protect ratepayers of the public utility. See e.g., *New England Telephone and Telegraph Company, Investigation into Reasonableness of Rates*, Docket No. 86-224, Order Approving Affiliated Interests Stipulation (July 16, 1993); *Unitel, Inc., Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Order Granting Exemption (Sept. 8, 1998); *Community Service Telephone Company, Request for Exemption from Required Approvals of Certain Reorganizations Under 35-A M.R.S.A. § 708*, Docket No. 98-973, Order

Granting Exemption (May 11, 1999). Typically, these exemptions have exempted “all” reorganizations except for a group of specified restructurings. The term “restructuring” is not defined in the statute, but instead has been defined in the Stipulation or Order approving the exemption and exceptions to the exemption.

A “restructuring” is defined in this Stipulation and in the prior stipulations and orders in much the same terms as the statutory definition of “reorganization,” i.e., “the creation, consolidation, merger, liquidation, transfer of ownership and control, dissolution or termination . . . accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of more than 10% of” Under the statutory definition of “reorganization,” however, if one of the named events involves a remote affiliated interest of the public utility (e.g., a separate subsidiary of the parent holding company that does business in another state), a “reorganization” of the public utility has taken place. By contrast, a “restructuring” occurs only if the described events involve the particular described entity. We have approved exemptions to the reorganization approval requirement so as to avoid the need to approve every reorganization, many of which may have little or no effect on the operating public utility, but we have retained control over those “restructurings” that may have a direct and substantial effect on the operations of the public utility.

Like the earlier stipulations and orders, the present Stipulation provides exceptions from the general reorganization approval exemption when specified restructurings occur. It requires approval of restructurings of Pine Tree itself and of restructurings resulting in entities that are likely to do business with Pine Tree. Pine Tree must also obtain approval of certain specified restructurings of PTW Pine Tree must also obtain approval of certain specified restructurings of PTW,² but not all activities that might reasonably be characterized as restructurings of PTW require approval.

We are concerned with the Stipulation’s treatment of certain restructurings that might occur with regard to certain preferred stock that will be owned by Prudential Insurance Company (Prudential). Prudential is a proposed major investor in PTW. As described at pages 4 and 5 of the Stipulation, the PTW stockholders agreement gives Prudential approval power over virtually every major decision that PTW may make. The

² Until recently, we approved several exemptions that did not require approval of a “restructuring” of the public utility’s parent corporation. This oversight came to light late in 1998 when Bell Atlantic-Maine filed a notice of the intent of its parent, Bell Atlantic Corporation, to merge with GTE. In that notice, Bell Atlantic asserted that the proposed merger was exempt because of provisions contained in the 1993 Order and Stipulation cited above. We did not rule on Bell Atlantic’s claim, but instead considered and approved the reorganization.

The most recent exemption granted, that for Community Service Telephone Company (CST), excepted all restructurings of the parent corporation (CSC) from the general exemption. Those restructurings therefore require approval.

preferred stock that will be owned by Prudential represents more than 70% of the total equity of PTW. The kind of control over the operations of PTW that Prudential possesses makes it arguable that the preferred stock is a "voting security" as defined in 35-A M.R.S.A. § 708(1)(B), i.e., "any security presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company or any proprietary or other interest serving the same purposes." The definition of "voting security" is significant under the statutory scheme because the owner of more than 10% of the voting securities of an affiliated interest of a public utility (e.g., a holding company) makes the owner also an affiliated interest of the public utility, and the creation of such an affiliated interest ordinarily constitutes reorganization of the public utility.

In addition, Prudential has the right to convert its preferred stock to common stock. Under the approval requirements of the reorganization statute, any conversion of Prudential's preferred stock that resulted in Prudential owning 10% of the voting securities of the affiliated interest in question (i.e., PTW) would constitute a reorganization and would require approval.

Notwithstanding the substantial powers possessed by Prudential as the holder of the preferred stock, the Stipulation states that Prudential is not an affiliated interest of Pine Tree, unless certain events occur. It does, however, define some actions with regard to the preferred stock as "restructurings" and requires Pine Tree to obtain approval for those restructurings.

Our primary problem with the PTW exemption and restructuring is their failure to require approval of certain actions with regard to the preferred stock of PTW that we believe should be subject to Commission approval. PTW will own 100 percent of Pine Tree and therefore has total control over its operations. In turn, Prudential (or future holders of the same or similar preferred stock issued by PTW) has very substantial control (approval power) over virtually every major decision that PTW might make. Under the Stipulation, however, Pine Tree is required to obtain Commission approval for only two restructurings that might take place with regard to the preferred stock in PTW: restructurings that result in the ownership of more than 50% of the "voting securities" of PTW and restructurings that result in the cessation of ownership of more than 50% of the "voting securities" of PTW. (The Stipulation provides that for the purpose of this provision, "the Initial Preferred Stock of PTW, and any New Preferred which has similar or greater rights, shall be considered to be voting securities.")

Our greatest concern is the failure of these provisions to define as a "restructuring" and to require approval of future acquisitions of the Prudential (or similar future) preferred stock. We have requested the parties to address these problems. We are also concerned that the Stipulation does not plainly require approval if Prudential (or future owners of the initial preferred stock or any owners of similar future preferred stock) converts its preferred stock to common.

On December 22, 1999, some of the parties provided us with proposed language that addresses the concerns described above and that they are willing to include in a

revised Stipulation. The language is based on possible modifications we discussed at deliberations but also contains further modifications. We have reviewed the proposed language and find that it adequately addresses both of the concerns described above. It would require approval of the acquisition of either the Initial Preferred Stock of PTW or any New Preferred Stock that carries similar rights (collectively "Voting Security Preferred Stock") if an entity (or group of affiliated entities) acquires 10% or more of such preferred stock. It also addresses conversion of Voting Security Preferred Stock in PTW to common stock. Approval would be required for any conversion that results in a person or group of affiliated persons holding common stock that constitutes 10% or more of the total common stock that would exist after the conversion. Finally, as in the original Stipulation, approval is required if Prudential (or a future owner of similar preferred stock) divests itself of 50% or more of the preferred stock of PTW.

If the parties file a Revised Stipulation that contains language identical to the proposed language, we will approve the Stipulation and the reorganization of Pine Tree, pursuant to the procedure set forth in the ordering paragraphs.

The ratemaking provisions of the Stipulation would dispose of two other matters presently pending before the Commission: *Public Utilities Commission, Investigation Into the Rates of Pine Tree Telephone and Telegraph Company Pursuant to 35-A M.R.S.A. § 7101-B*, Docket No. 98-90, and Pine Tree's proposal to expand the basic service calling area (BSCA) for the New Gloucester exchange to include Portland. Pine Tree filed its BSCA proposal in *Public Utilities Commission, Inquiry Into Implementation of Basic Service Calling Area (BSCA) Rule, Chapter 204*, Docket No. 99-197. The Stipulation does not propose to dispose of those two matters upon approval of the Stipulation. Rather, it states that "within ten days after the closing of the acquisition of Pine Tree," Pine Tree will file the rates and will begin to implement the BSCA plan that are described in the Stipulation. Thus, the rates and BSCA plan described in the Stipulation are contingent on the acquisition taking place and, necessarily, approval of the reorganization by this Order. We understand that the present ownership of Pine Tree (Mr. Hutchinson) does not agree that Pine Tree will be bound by those provisions if the reorganization is not approved and if the sale does not occur.

We note that the BSCA plan contained in the Stipulation differs somewhat from the plan filed in the Inquiry and also contains rate design changes for the Gray and West Gray exchanges to make the premium and economy rate structures consistent among all three exchanges. When Pine Tree files rate schedules for the BSCA plan, it shall file them in a separate docket (rather than in the Inquiry cited above). To the extent that the Stipulation plan differs from the requirements of Chapter 204 (the BSCA rule), Pine Tree should request a waiver from those requirements.

Accordingly,

1. Pursuant to 35-A M.R.S.A. § 708(2), we approve the reorganization of Pine Tree Telephone & Telegraph Company, as described in the Stipulation filed on December 8, 1999, provided that the proposed changes to that Stipulation, as shown in Appendix A, are included in a Revised Stipulation.
2. We delegate to the Director of Finance the authority to review any Revised Stipulation that is filed with the Commission, to determine if it conforms to the language contained in Appendix A, and to issue a Supplemental Order approving the Revised Stipulation.
3. If the Revised Stipulation is filed and approved by the Director of Finance, we incorporate it as part of this Order.

Dated at Augusta, Maine, this 23rd day of December, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.